

1 CAZ HASHEMI, State Bar No. 210239
2 BENJAMIN M. CROSSON, State Bar No. 247560
3 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
4 650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
5 Email: chashemi@wsgr.com
bcrosson@wsgr.com

6
7 Attorneys for Non-Party
App Annie Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 EPIC GAMES, INC.,) Case Nos. 4:20-CV-05640-YGR
13 Plaintiff,)
14 v.) CLASS ACTION COMPLAINT
15 APPLE INC., a California corporation,) NON-PARTY APP ANNIE'S
16 Defendant.) ADMINISTRSTIVE MOTION TO
17) SEAL
18 _____)

1 Pursuant to Civil Local Rules 7-11 and 79-5, Non-Party App Annie Inc. (“App Annie”)
 2 submits this Administrative Motion to Seal (“Administrative Motion”) regarding certain exhibits
 3 identified by Defendant Apple Inc. (“Apple”) in connection with the upcoming trial in this
 4 matter. The material that App Annie seeks to seal, and the reasons why such information
 5 warrants sealing, are described below and in the supporting declarations of Ketaki Rao (“Rao
 6 Decl.”) and Benjamin M. Crosson (“Crosson Decl.”).

7 **I. INTRODUCTION AND BACKGROUND**

8 App Annie is one of the leading providers of information and analytics regarding the
 9 mobile applications marketplace, offering a suite of products to help a broad range of industries,
 10 including mobile-first as well as brick-and-mortar companies, improve their mobile strategies.
 11 Rao Decl. ¶ 2. App Annie derives the vast majority of its revenue via paid subscription services,
 12 known as App Annie Intelligence. *Id.* ¶ 3. App Annie’s Intelligence makes use of various data
 13 collected by App Annie, using principles of data science and other sophisticated modeling
 14 techniques, to generate a wide variety of app performance estimates regarding the mobile
 15 marketplace (“estimate data”). *Id.* ¶ 2-3.

16 On March 31, 2020, plaintiff in the related case *Cameron et al. v. Apple, Inc.*, Case No.
 17 4:19-cv-03074-YGR (“*Cameron*”) served a Subpoena to Produce Documents, Information, or
 18 Objects on App Annie, seeking years’ worth of App Annie’s proprietary estimate data that it
 19 sells to customers. Crosson Decl. ¶ 2. On August 5, 2020, Defendant Apple also served a
 20 Subpoena to Produce Documents, Information, or Objects on App Annie seeking additional
 21 estimate data in connection with the *Cameron* matter. *Id.* ¶ 2. App Annie met and conferred
 22 with both parties separately and came to an agreement on the scope of estimate data to be
 23 produced in response to the subpoenas. *Id.* ¶ 3. In October 2020, App Annie produced over
 24 **fifteen terabytes of estimate data** to the parties in the *Cameron* matter in response to their
 25 subpoenas, designated Confidential under the protective order entered in that matter. *Id.* ¶ 3.

26 In November 2020, the parties in the *Cameron* matter informed App Annie that Plaintiff
 27 Epic Games brought suit against Apple in the above-captioned matter, and that the *Cameron*
 28 parties intended to share all third-party productions made in connection with the *Cameron* matter

1 with the Epic Plaintiffs. *Id.* ¶ 4. App Annie agreed to the *Cameron* parties sharing the produced
 2 estimate data pursuant to the protective order entered in this matter. *Id.* ¶ 4.

3 On November 25, 2020, the parties in the *Cameron* matter made an additional request for
 4 information regarding the nature and structure of App Annie's estimate data. *Id.* ¶ 5. On
 5 December 14, 2020, Plaintiff Epic Games also served a Subpoena to Produce Documents,
 6 Information, or Objects on App Annie seeking additional estimate data in connection with this
 7 matter. *Id.* ¶ 6. App Annie produced the additional requested estimate data, along with a
 8 confidential and proprietary document detailing the fields, definitions and structure regarding the
 9 produced estimate data ("Bulk API Documentation"), also designated Confidential under the
 10 protective order in this matter. *Id.* ¶ 7.

11 On Saturday, April 24, 2021, counsel for Apple contacted counsel for App Annie,
 12 indicating that Exhibits DX-5408, DX-5409, DX-5410, DX-5411, and DX-3591 were on
 13 Apple's exhibit list for the trial in this matter, scheduled to start May 3, 2021. *Id.* ¶ 8. Apple's
 14 counsel instructed App Annie that if it wanted to protect the Confidential designation of its
 15 estimate data, it should file the instant motion. *Id.* ¶ 8.

16 The information warrants sealing for multiple reasons. First and foremost, the estimate
 17 data information in Exhibits DX-5408, DX-5409, DX-5410, and DX-5411 contain a large subset
 18 of App Annie's Intelligence data over a number of years, which form the entire basis for the
 19 Intelligence product it sells to customers. Rao Decl. ¶¶ 3, 8. This Intelligence product is the
 20 means by which App Annie generates the vast majority of its revenue. *Id.* ¶ 3. Public disclosure
 21 of this information would significantly harm App Annie's competitive position in the
 22 marketplace, not only because App Annie's prospective and current customers could now get—
 23 for free—that which they would otherwise have to pay for, but also because App Annie's
 24 competitors would now have unfettered and free access to its product. *Id.* ¶ 8. Second,
 25 disclosure of the Bulk API Documentation, Exhibit DX-3591, which contains confidential
 26 proprietary information regarding the nature and structure of App Annie's estimate data, would
 27 also place App Annie at a competitive disadvantage, as its competitors could take advantage of
 28 this intimate understanding of App Annie's product. *Id.* ¶ 8.

1 Moreover, App Annie's request is as narrowly tailored as it can be while protecting App
 2 Annie's ability to monetize its products, in particular because counsel for Apple has provided no
 3 further clarity as to which portions of these estimate data may be introduced at trial, other than
 4 indicating in an email to App Annie's counsel that "these data are likely to be used only in
 5 summary exhibits." Crosson Decl. ¶ 8.

6 **II. EXHIBITS TO BE SEALED**

7 App Annie requests that the Court seal the following Defense Exhibits in their entirety:
 8 DX-5408, DX-5409, DX-5410, DX-5411, and DX-3591.

9 **III. LEGAL STANDARD**

10 While there is a presumption of public access to judicial records, that right is not
 11 absolute. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *Kamakana v. City &*

12 *County of Honolulu*

13 , 447 F.3d 1172, 1178-79 (9th Cir. 2006). Courts in this district have applied
 14 the "compelling reasons" standard to applications to seal materials in connection with dispositive
 15 events, including trials that are "more than tangentially related to the merits of a case." *Ctr. For*
Auto Safety v. Chrysler Grp. LLC, 809 F.3d 1092, 1101-02 (9th Cir. 2016).

16 Compelling reasons exist to seal information when disclosure of such information may
 17 become a vehicle for improper purposes, such as granting an unfair advantage to competitors or
 18 causing a business irreparable financial harm. *Nixon*, 435 U.S. at 598; *In re Elec. Arts, Inc.*, 298
 19 F. App'x 568, 569 (9th Cir. 2008) (ordering sealing where information could be used to harm
 20 party's competitive standing). Courts routinely find that parties established compelling reasons
 21 to seal confidential and proprietary business information if disclosure of such information would
 22 put the disclosing party at a competitive disadvantage. *See e.g. Oracle v. Concentric Analgesics*,
 23 2021 WL 1022874 (N.D. Cal. Mar. 17, 2021) (finding compelling reasons to seal proprietary and
 24 confidential business and intellectual property information that could give competitors an unfair
 25 advantage); *Apple, Inc. v. Samsung Elecs. Co.*, 2012 WL 6115623 (N.D. Cal. Dec. 10, 2012)
 26 (granting motion to seal Samsung's source code under compelling reason standard); *Adtrader*
 27 *Inc. v. Google LLC*, 2020 U.S. Dist. LEXIS 207754 (N.D. Cal. Feb. 12, 2020) (finding
 28

1 compelling reason to seal sensitive and confidential non-public information as disclosure could
 2 cause competitive harm).

3 **IV. THERE IS A COMPELLING REASON TO SEAL APP ANNIE'S
 INFORMATION**

5 App Annie seeks to seal Exhibits DX-5408, DX-5409, DX-5410, DX-5411, and DX-
 6 3591. Specifically, these Exhibits contain (i) App Annie's proprietary estimate data that it sells
 7 to customers, contained in Exhibits DX-5408, DX-5409, DX-5410, and DX-5411, and (ii) App
 8 Annie's Bulk API Documentation, Exhibit DX-3591, which explains in confidential and
 9 proprietary detail the fields, definitions and structure regarding App Annie's estimate data. Rao
 10 Decl. ¶¶ 7-8. Given the sensitivity of the estimate data and Bulk API Documentation, App
 11 Annie treats this information as confidential and does not disclose it to the public, only to paying
 12 customers. *Id.* ¶¶ 3-5. Further, App Annie's sales contracts with customers forbid customers
 13 from sharing any of App Annie's estimate data and related information with others.¹ *Id.* ¶ 5.
 14 Additionally, the confidential estimate data and Bulk API Documentation were produced here on
 15 condition that the parties take steps to maintain their confidentiality. Crosson Decl. ¶¶ 3-4, 7;
 16 Rao Decl. ¶ 6.

17 App Annie protects the confidentiality of this information for one main reason – this
 18 information is the main basis for how it generates revenue. As stated in the Rao Declaration,
 19 “The estimates...are the core component of the products App Annie sells for revenue
 20 generation.” Rao Decl. ¶ 3. App Annie would lose the opportunity to effectively monetize its
 21 product, and its revenue generating capabilities would be significantly hampered, if this
 22 information was released to the general public. *Id.* ¶ 8. Not only would it likely lose prospective
 23 customers who would not consider paying for a product they could now essentially access for
 24 free, but App Annie could also stand to lose current customers who would obviously prefer to
 25 receive its products free of charge. *Id.* ¶ 8.

26
 27 ¹ In exceptional cases, all of which are approved in writing and limited in scope, App Annie
 28 may allow customers to share some of the information they receive as part of their Intelligence
 subscription. Rao Decl. ¶ 5.

In addition to the substantial potential degradation of its ability to generate revenue from prospective and current customers, App Annie would also be placed at an extreme competitive disadvantage vis-à-vis the position of its product in the marketplace. If this information were made public, App Annie's competitors would not only have unfettered and free access to its product, but would also have access to the Bulk API Documentation that explains in confidential, proprietary detail the product and related structure and nature of its estimate data. *Id.* ¶ 8. The unfair competitive advantage this would give to App Annie's competitors cannot be overstated, as competitors would be able to utilize every aspect of what App Annie provides to customers and use that information to bolster their own products. *Id.* ¶ 8.

Finally, App Annie’s request is as narrowly tailored as possible, to protect only the confidential information described herein, particularly in light of the fact that App Annie as of yet has no clarity about Apple’s anticipated uses of these exhibits at trial. Crosson Decl. ¶ 8. App Annie seeks to seal only its own proprietary confidential information that it produced in good faith in response to multiple subpoenas. *Id.* This information is the core of App Annie’s product, and public disclosure of this information would cause irreparable harm to App Annie’s business. Rao Decl. ¶ 8.

V. CONCLUSION

For the compelling reason described above, App Annie respectfully requests that the Court grant the Administrative Motion with respect to the information identified herein.

Dated: April 28, 2021

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Benjamin M. Crosson
Benjamin M. Crosson

Attorneys for Non-Party App Annie Inc.